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10/796,025	03/10/2004	Wataru Tazoe	503.43626X00	2138

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EXAMINER

HAND, MELANIE JO

ART UNIT PAPER NUMBER

3761

DATE MAILED: 05/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/796,025

Applicant(s)

TAZOE ET AL.

Examiner

Melanie J. Hand

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 5,6,9,13 and 18-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,7,8,10-12 and 14-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed March 16, 2006 have been fully considered but they are not persuasive. With respect to applicant's arguments regarding the election with traversal of claims 1-4, 7, 8, and 10-12, Examiner acknowledged the traversal in the previous Office action and was stating that the traversal was not persuasive and that the election requirement is final. Examiner reminds applicant that a mere traversal of a restriction and/or requirement does not guarantee withdrawal of that requirement. Examiner reaffirms the finality of the election restriction requirement in the previous Office action.

With regard to applicant's assertion that new claims 14-24 are directed to the elected species, Examiner agrees with respect to claims 14-17 only. Claims 18-24 are clearly not directed to the elected species, in that the independent claims 1 and 10 do not set forth a vacuum pump, a urine sensor that activates said vacuum pump, or the specific act of discharging of urine from the absorbent material through a urine tube to a urine tank, therefore claims 18-24 are withdrawn from consideration as non-elected by original presentation.

With respect to applicant's argument that because Lawrence does not teach a hard-breathable topsheet, that a rejection under 35 U.S.C. 102 is improper, Examiner disagrees. Applicant asserts that the topsheet of Lawrence is not "fairly airtight". In the specification, applicant states that the top sheet of the claimed invention is highly airtight. Aside from the inconsistency between the Remarks and the specification to which they refer, "highly" and "fairly" are both qualitative terms that are supported by the breathability measurements. As such, these measurements and the definition "highly airtight", while collectively clearly defining "hard breathable", were not recited in the claims. Although the claims are interpreted in light of

the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### ***Election/Restrictions***

Newly submitted claims 18-24 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 18 and 22 set forth a vacuum pump, a urine sensor that activates said vacuum pump, and the specific act of discharging of urine from the absorbent material through a urine tube to a urine tank, which are limitations not set forth in the independent claims 1 and 10 of the elected species.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 18-24 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 14-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claims set forth breathability measurements for a top sheet whose composition necessarily must be disclosed

by applicant. A flexible nonwoven sheet is not a sufficient description of the composition of said top sheet which would enable one of ordinary skill in the art to make or use the invention to the extent that the breathability measurements could be reproduced. Claims merely setting forth physical characteristics desired in article, and not setting forth specific compositions which would meet such characteristics, are invalid as vague, indefinite, and functional since they cover any conceivable combination of ingredients either presently existing or which might be discovered in future and which would impart desired characteristics; thus, expression "a liquefiable substance having a liquefaction temperature from about 40°C. to about 300°C. and being compatible with the ingredients in the powdered detergent composition" is too broad and indefinite since it purports to cover everything which will perform the desired functions regardless of its composition, and, in effect, recites compounds by what it is desired that they do rather than what they are; expression also is too broad since it appears to read upon materials that could not possibly be used to accomplish purposes intended.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-4, 7, 8, 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Lawrence et al (U.S. Patent No. 5,911,222).

With respect to **claims 1-4, 7**: Lawrence discloses a rectangular interface device (urine receptacle) which comprises an upper and lower edge (extending upwardly and downwardly) that connects a breathable coverstock body contacting surface (topsheet, with regard to claim

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7), and an impervious bottom surface or shell 28, whereas a fibrous foam (absorbent material) is house therein between. Also with regards to claims 1 and 10, a leg bag (or urine tank whereas a tank is a vessel for holding gas or liquids, is connected to a duck valve 68 (second drainage means) which in turn is connected to t-shaped tubing (first drainage means). Drain valve 69 is used to seal the bag or remove the liquid, a vacuum pump is used to create suction in the tubing (creating negative pressure in tubing) creating an airtight environment for the interface device, and a control means 64(urine sensor) is provided to detect when urine is present in the interface device which has a motor control that switches on to drain urine from the interface device via said tubing into the collection vessel. All of the above references can be found in (Column 8-Column 10, Line 9).

With respect to **claim 8**: A cross-section of the interface device shaped like an omega or a U is shown in Figure 2a taught by Lawrence.

With respect to **claims 10-12**: Please see the rejection of claim 1 in addition to the following: A cross-section of the interface device shaped like an omega or a U is shown in Figure 2a taught by Lawrence. Lawrence discloses cut out areas (which create gathers) (claim 11) concave (slanted) in shape that conform to a patient's leg to prevent leakage. (Column 5, line 16) (claim 12)

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject

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matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawrence ('222) in view of Fujioka et al (U.S. Patent No. 5,451,207)

With respect to **claims 14-17**: Lawrence does not teach breathability measurements for said top sheet. Fujioka teaches a diaper having a plastic (i.e. flexible) nonwoven film backsheet 5 as disclosed by applicant as the material for the top sheet of the claimed invention. Fujioka teaches that said topsheet 4 has a breathability of at least 3 cc/cm<sup>2</sup>/sec (Col. 3, lines 40,41), which would encompass the ranges set forth by applicant for when the topsheet of the claimed invention is moist and when said topsheet is dry. Fujioka teaches that such a backsheet having a high-breathability alleviates stuffiness within said diaper (Col. 3, lines 49-51), therefore it would be obvious to one of ordinary skill in the art to utilize the nonwoven material having the breathability taught by Fujioka as a material for the topsheet of the device taught by Lawrence, as that device is also configured for positioning adjacent a user's skin, and thus increased breathability would be desirable to alleviate discomfort.

***Conclusion***

Applicant's amendment adding new claims 14-17 necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand  
Examiner  
Art Unit 3761

MJH

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SUPERVISORY PRIMARY EXAMINER  
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